NOVEMBER/DECEMBER 2020

FE

FRPO'S **FAIR EXCHANGE** OF RENTAL INDUSTRY NEWS

RECENT CHANGES AT THE LTB
MANAGING PARCEL DELIVERIES
THE SUBMETERING EVOLUTION
THE IMPORTANCE OF GIVING

THE VOICE OF THE FEDERATION OF RENTAL-HOUSING PROVIDERS OF ONTARIO

THE BENEFITS OF BENCHMARKING

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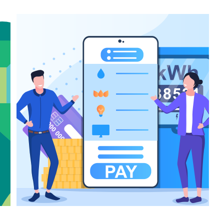

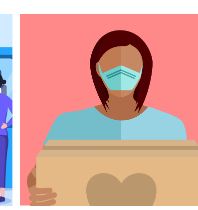

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FAREWELL TO A CHALLENGING YEAR

A recap of FRPO's advocacy efforts

TONY IRWIN
President & CEO
FRPO

The end of 2020 is in sight! What a year it has been for all of us. A few weeks ago, we held our first ever virtual MAC Awards Gala, and it was a huge success. We were thrilled to be able to proceed with this important event to acknowledge our industry's accomplishments and all of the hard-working people in it.

We have been diligent all year to ensure you have a strong voice at Queen's Park. Since the beginning of the pandemic, we have provided regular updates to policy makers on how COVID-19 is impacting our industry. We continue to advocate for government support to address substantial rent arrears and resources to improve the functioning of the Landlord and Tenant Board.

Before we look to the start of a new year and the opportunties ahead, I think it's important we provide a brief recap of our advocacy efforts throughout this year:

- Passage of Bill 184 which made changes to the Residential Tenancies Act to improve various operational issues at the LTB
- Ongoing advocacy on issues impacting rental housing providers during the pandemic
- Planning and Development Framework changes in Bill 197
- Successfully opposed efforts by the Advocacy Centre for Tenants Ontario to extend the eviction ban
- Increase of LTB adjudicator appointments
- Successfully advocated for the rent freeze to be temporary and AGI's to be maintained
- Continued outreach with LTB & Ministry of Housing on proposed rule changes and changes to the Standard Lease.

FRPO also responded to a call for stakeholder submissions before the introduction of the Provincial Budget in November that called for four actions:

1. Create a program to address rental arrears accumulated during the current pandemic
2. Address significant delays at the Landlord and Tenant Board (LTB);
3. Create a concierge service to expedite purpose-built rental housing approvals
4. Reduce government-imposed costs on new rental projects.

We are expecting a busy start to 2021 and we remain committed to ensuring your voice is heard and priorities are addressed at Queen's Park. I encourage all members to get involved, please reach out to us at any time to share comments, concerns, questions or stories. Your feedback is valuable and helps us shape our priorities going forward.

In closing, I would like to thank our members for your unwavering support, dedication and commitment during the most difficult of circumstances. I am truly grateful for all of the extra efforts you have put forward and humbled by what you have done to show support for your residents during this time. We wish you a wonderful holiday season filled with good health and happiness!

KEY ISSUES IN HOUSING AFFORDABILITY

Addressing recent concerns and misconceptions

BY JOHN DICKIE, PRESIDENT, CANADIAN FEDERATION OF APARTMENT ASSOCIATIONS

This article addresses various housing concerns and misconceptions that have become important recently in the setting of public policy, including the rent control rules in Ontario, mortgage insurance policy and housing supply policies.

THE IMPACT OF RISING RENTAL ASSET PRICES

Some housing observers are concerned about the current high prices of rental housing assets, and believe that those prices work against housing affordability. However, economic analysis and modelling strongly suggest that the opposite is true.

Higher rents are associated with high asset values, but the issue is, which causes the other. The values and prices of rental housing assets are primarily determined by two factors: market rents, and the net capitalization rate, which turns a stream of net income into a capital value. The net cap rate is determined by current and expected interest rates, and by the market expectation about the future path of the net income stream (rents less costs).

Rental housing asset values are high and rising because interest rates are at historically low levels and may still fall more, and because rental housing is the real estate asset most resilient to the impacts of COVID-19, since everyone has to live somewhere.

Higher rental asset values draw in new investment and construction, and when the larger supply of rental units is available, the additional supply results in a lower rent for the use of rental property to live in (assuming the same demand). In other words, everything else being equal, higher asset values lead to *lower market rents*, not higher rents.

Lower rental housing asset values work against rental housing affordability because lower values discourage investment in rental housing, both in the new construction sector, and in preserving and refurbishing existing rental housing.

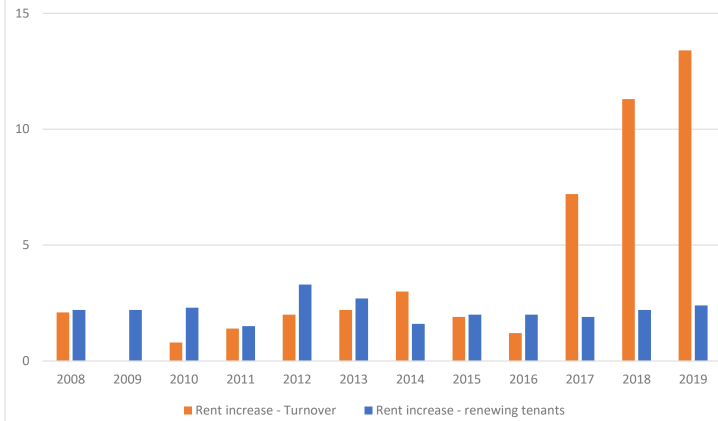
In the long run, the costs of providing rental housing (and the services that come with it) substantially affect rents. However, in the short run, costs do not drive rents; instead, demand drives rents. Discouraging investment in rental housing would reduce rental

CONTRAST THE EFFECT OF HOUSE PRICES

It is true that higher house prices make for less affordable owner-occupied housing. However, that is because the homeowner buys the asset and gains the right to occupy the property by owning it.

In contrast, the renter only pays for the right to occupy the property for a limited period of time, while a different person owns the asset. The split allows a higher asset value to drive more supply of the occupation rights, which reduces the price of the occupation rights, namely the rent.

Figure 1: Sources of Rent Increases 2008 - 2019



housing supply, and tend to increase the market share of ownership tenure. That is one important reason why it is so important not to tighten rent control rules. Tighter rent control rules tend to reduce new rental supply, and paradoxically, put upward pressure on market rents, the exact opposite of what proponents want.

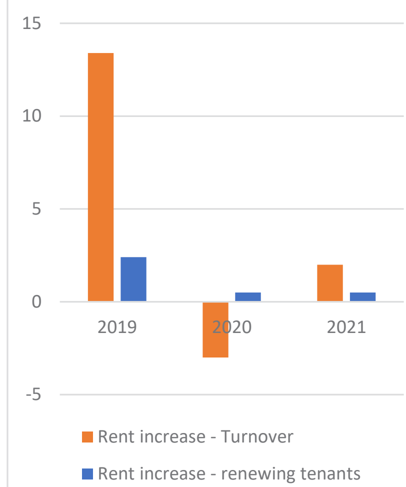
Likewise, steps to reel in rising rental asset prices, such as new limits on the use of CMHC-insured mortgage funds, will tend to reduce asset prices, which tends to reduce new supply and put upward pressure on rents, quite contrary to the CMHC goal of increasing affordability.

THE RECENT RAPID ACCELERATION (AND DECELERATION) OF RENTS

CMHC researchers report that from 2008 to 2016, across Canada, rent increases on turnover averaged less than 2%, whereas in 2017, 2018 and 2019 they averaged 7%, 11.5% and 13.5% per year respectively. See figure 1. Rent increases on turnover are increases for units which are vacated and rented to a new tenant (often with substantial upgrades). While the amount of turnover is usually 20% to 30% of the rental stock in normal years, in years when market rents are rising significantly, turnover tends to fall to about 10% to 15%, as it did in 2018 and 2019. Therefore, the average rent increase across all units was usually much closer to the average rent guideline (in rent-controlled provinces) at 2%, than it is to the rents for units which turn over.

However, since COVID-19 struck, many rents have fallen. Figure 2 shows CFAA's projections about the path of average rents in 2020 and 2021, with 2019 for comparison. There is considerable variation within the

Figure 2: Sources of Rent Increases, 2019-2021



projected averages. In particular, rents have fallen significantly in many university markets and in most downtown areas, especially in major centres. Turnover has shot up there. In more suburban areas and secondary and tertiary markets, rents have largely held firm.

In many areas, the impact on the rental provider of a unit turn also depends a great deal on when the outgoing tenant moved in. Rental housing providers are used to what is called churn. A 25% turnover rate does not mean that all the units turn over every four years. Instead, in a 100 unit building with 25 unit turns, perhaps 10 outgoing tenants just moved in a year ago. Another 7 moved in two years ago. Another 3 of the tenants who leave moved in three years ago. Only 5 of the outgoing tenants moved in between 4 and 30 years ago, so that it will take 20 years or more to see every unit in the building turn over.

The practical effect of churn is that in areas that saw sharp rent decreases, many new tenants will move in at lower rents than the rents the outgoing tenants began to pay one or two years ago. In some cases, the rents will be down by 10% or 20%. Combining that effect with a modest number of turnovers of long-standing tenants, the projections show an actual decrease in average rents on turnover in 2020, and only a modest increase in 2021. The BC and Ontario rent freezes, reduced rental demand in Alberta, and Quebec's usual low guideline, suggest that the average increase on renewal will also be very low.

Why did market rents go up some much from 2017 to 2019?

POPULATION GROWTH

For decades, Canada has accepted a relatively high number of immigrants compared to our population. Substantial immigration is a good thing for a country with Canada's demographic profile. Baby boomers are aging and retiring, and without new entrants to the workforce, we will have too many people retired and drawing private and public pensions, compared with the number of people working and paying into pensions and income tax. Given Canada is a small market by world standards, becoming larger brings benefits in economies of scale, which improve competitiveness. However, changes in immigration have effects on the rental market.

Between 2011 and 2015, Canada's average population increase was 340,000 people per year. Between 2016 and 2019, that steadily increased to 530,000 per year, a total increase of 56%, mostly due to increased immigration.

New rental construction could not keep up with the sharp increase in rental demand over the four years up to 2019. Construction intended for the homeownership market also could not keep up with the sudden increase in demand, largely because of difficulties obtaining timely planning approvals. As a result, tenants who would have moved into their first ground-oriented home continued to rent. All those factors meant that growth in housing demand outstripped the growth in housing supply.

Whenever the growth in demand outstrips the growth in supply, market prices will rise. In the rental market, vacancies fall as well. But the opposite is also true. To make housing more affordable, governments need to get their acts together so that housing supply can keep up with, or get ahead of, population growth, and especially immigration.

CONCLUSION

All these factors and issues have a significant impact on rents, and on the returns on rental investments. It would be a very good thing if public policy-makers, officials and politicians understood and appreciated how these and other issues tie into rental supply, rental availability and housing affordability.

FRPO is a key association member of CFAA, the sole national organization representing exclusively the interests of Canada's $520 billion rental housing industry, which houses more than nine million Canadians.

FEATURE

THE EVOLUTION OF SUBMETERING

Success found in lessons from the past

BY ■ PETER R.J. MILLS, CO-CEO, WYSE METER SOLUTIONS INC.

We learn from those before us — an evolution in understanding from what plants are safe to eat to what smartphone to buy. As individuals, we grow based on the experiences of others. As organizations, a sophisticated understanding of past shortfalls sets us up for future success.

As industry-leading developers/owners find budget certainty and resident flexibility in submetering, there are lessons to be learned in each successful project.

Recently, Wyse explored hundreds of projects and discovered five consistent and significant challenges faced at various stages of submetering projects. In each, we identified easy-to-apply best practices that made the difference between success and frustration.

CLEAR EXPECTATIONS

"I not only did not understand what I was required to do related to submetering, but I did not know how those baseline requirements could be built upon to help my project in the long run."

> **“BEYOND ELECTRICITY, MANY DEVELOPERS/ OWNERS HAVE FOCUSED ON ‘TRIPLE-NET LEASING’ AS IT RELATES TO UTILITIES — SUBMETERING FOR ELECTRICITY, WATER AND THERMAL.”**

Since August 1, 2007, all new condominium buildings constructed in Ontario must include a smart meter for electricity for each unit. Under the regulation, a developer has the choice whether to have individual units metered directly by the local distributor, or to have the distributor provide a bulk interval meter for the building while having individual units submetered by an Ontario Energy Board (OEB) provider.

Existing condominiums are not required to install smart meters for each unit but can do so at the option of the condominium corporation.

But meeting only basic requirements does not mean you will be as successful as you can be.

Beyond electricity, many developers/owners have focused on 'triple-net leasing' as it relates to utilities — submetering for electricity, water and thermal. This step has allowed many to gain control of runaway utility costs and assert some influence over operating expenses, all while maintaining a competitive edge in the eyes of residents.

DEFINED TIMETABLES

“With so many other balls in the air, I kept pushing submetering further down my to-do list. That ended up costing me money and time I could not afford to lose.”

Submetering systems are as key and complex as any building systems and should be included in project planning from the beginning. Yet, developers/owners often start too late — even after the building is opened and tenants have moved in. By bringing submetering providers in during the first design revisions phase, the provider and contractor can work closely on requirements and timetables to maximize efficiency and save money.

EFFECTIVE PROJECT MANAGEMENT

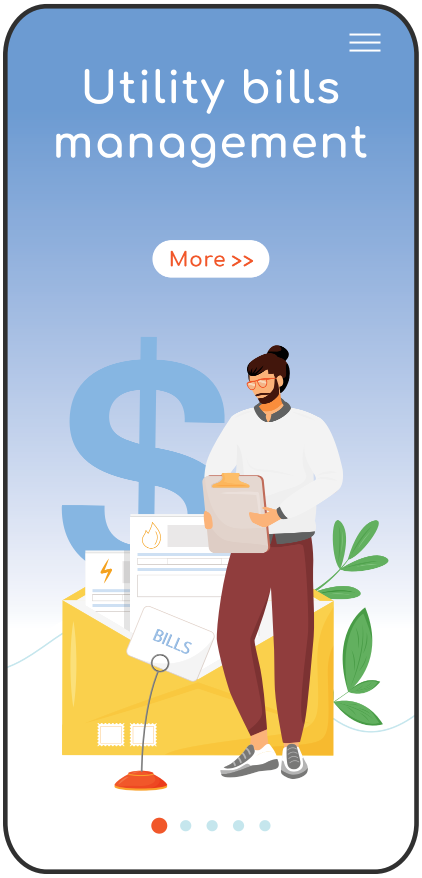
“My team did not have the expertise to go with an all-utilities strategy. ‘Going it alone’ was not the best plan.”

Submetering providers stand by you every step. Once contacted, a provider will look at your project, construct a solution, help shape financial options for meters and installation, including a no-cost option, as well as install and maintain the meters. Once the switch is flipped, these experts will also help you and your residents maximize your submetering data

.

ABILITY TO EMBRACE LATEST TECHNOLOGY

“I have always tended to stick to ‘tried and true’ when it came to technology — even if a generation or two behind. But by not embracing the most recent advances, I was costing my team time and money.”



In its 2019 *Global Construction Survey*, KPMG found that top developers/owners — those representing the top 20% worldwide — were "fully committed to investment in technologies that can enhance performance."

You want to be on the cutting-edge — because your competition is already there.

Submetering provides a technological edge when it comes to utility management: Wireless metering. Retrofit programs. Real-time data. Leak and freeze notification. As technology will continue to drive the future of utilities, forward-thinking organizations will continue to wholeheartedly adopt submetering and realizing value today — and tomorrow.

MAXIMIZING PROJECT MOMENTUM

"I assumed once the meters were installed and walls sealed up, there wasn't much left for my team to think about. I was wrong."

The project does not end when residents move in.

Submetering is essential to a well-managed building of the future, with potential increases of $1,800 per suite per year in building financial performance. Removing in-suite utilities costs from common element fee calculation means lower fees and more desirable living spaces.

It also means addressing resident demands as they evolve. According to the 2019 *Canadian Multi-Res Tenant Rental Survey*, more than 3-in-5 Canadian multi-residential tenants wanted to be billed for only the utilities they used. Do you think those numbers are going down with more people working from work using energy all day long?

To realize those gains, however, you need to keep up. Keep staff fully trained, build and maintain informative resident materials and portals, understand how to maximize the constant flow of useful data being delivered. Some industry leaders recommend budgeting someone's time, on your staff or with a vendor, to analyze the data. Submetering providers can help with all those efforts.

Peter R.J. Mills is Co-CEO, **Wyse Meter Solutions Inc.,** *Canada's leading provider of utility submetering, billing and expense management services. Peter is always available for a chat or free project review and can be reached at 1.416.709.0079 and pmills@wysemeter.com.*

'TIS THE SEASON FOR PARCEL DELIVERIES

Legal tips and tech for managing the December deluge

BY ■ ERIN RUDDY, EDITOR, MEDIAEDGE

With many regions across Canada in the throes of a second lockdown and the holiday season now in full swing, multi-residential property managers are facing a surge in parcel deliveries driven by a huge increase in online purchasing. For the e-commerce sector, this is something to celebrate, but for resource-strapped landlords ill-equipped to manage the daily deluge of incoming groceries and Amazon shipments, it means more strife, additional administration, and potentially unsafe conditions.

As Joe Hoffer of Cohen Highley LLP points out, online shopping isn't anything new, but the pandemic has accelerated the trend by way of store closures and strict measures to keep people physically distanced. According to Statistics Canada, e-commerce revenues increased 110 per cent between May 2019 and May 2020 — and that's well before "Black Friday" sales and holiday gift guides augmented the consumer appetite.

"By now, most landlords have instituted a policy making it clear that tenants are responsible to arrange for pick-up of their parcels, and that parcels should not be delivered to their units, but rather, left at the entranceway or in the lobby," Hoffer says. "If a landlord has no policy, then that landlord is at risk of liability for theft, loss, and other damages."

In other words, a parcel delivery policy is something no landlord should be without.

Randy Daiter, Vice President, Residential Properties, at M&R Holdings, says his company instituted an updated version of its original policy early in the pandemic, when safety and infection control became utmost priorities. "Given the importance of practising physical distancing and reducing external traffic flow into our buildings, we asked that our residents continue to pick up their deliveries and packages outside the building whenever possible," he says. "It's the resident's responsibility to make arrangements for the retrieval of their deliveries. However, for residents with medical or mobility issues, or for those who are self-isolating, alternative arrangements can be made."

That, according to Hoffer, is an important Human Rights Code consideration. "If a tenant has serious mobility issues and is unable to comply with a policy requiring them to pick up packages at a drop off area in the lobby, then the landlord is obliged to ensure there is a means to accommodate the tenant's needs," he explains.

A good policy should also address liability, making it make it clear — "in bold letters," says Hoffer — that the landlord shall not be responsible for lost or stolen parcels and that the risk of such lies entirely with the tenant. Additionally, the policy should address that, "In cases of breaches of the FPPA, or bylaws, or the Fire Safety Plan, where violations of the policy are observed, steps to enforce compliance will be taken."

"ACCORDING TO STATISTICS CANADA, E-COMMERCE REVENUES INCREASED 110 PER CENT BETWEEN MAY 2019 AND MAY 2020 — AND THAT'S WELL BEFORE "BLACK FRIDAY" SALES AND HOLIDAY GIFT GUIDES AUGMENTED THE CONSUMER APPETITE."

"TO KEEP UP WITH THE FLOW, MANY MULTI-RESIDENTIAL BUILDINGS HAVE BEGUN TO INVEST IN "SMART LOCKER SYSTEMS" LIKE CANADIAN-MADE SNAILE."

SMART SOLUTIONS FOR ALL SEASONS

While the holidays tend to bring in the most parcel deliveries over other seasons, it is unlikely we'll see an end to the online shopping trend anytime soon. The December gift-buying rush will transition into January returns, and undoubtably e-commerce will continue to prove itself as a safe, reliable and efficient way of procuring goods as the world awaits a vaccine. But even then, the trend will continue.

To keep up with the flow, many multi-residential buildings have begun to invest in "smart locker systems" like Canadian-made Snaile. The system uses infrared light sensors to detect when a package has been inserted into a locker, at which point a notification is sent by text message or e-mail to alert the recipient of the delivery. Working in reverse, users can insert packages into their locker and let carriers know that they're ready for pickup.

The process is clean, simple, touchless, and removes the involvement of building staff—not to mention the unsightly dumping of parcels at entranceways that could lead to trip and falls.

"The Snaile locker system allow parcel recipients a contactless pickup of their deliveries at their own convenient time without involving any staff or requirement to leave the building," says Patrick Armstrong, CEO. "Developers, landlords, and REITS have always been early adopters of our tech, but the pandemic has pushed condos way up. Now that parcels are everywhere, the problem is very evident and getting bigger."

For older buildings with limited space, the solution may not be ideal, but most new builds are incorporating automated locker systems into their designs. Another plus for Snaile lockers is that they are accessible by a number of major carriers, including FedEx, Purolator, DHL and Intelcom, one of Amazon's largest package delivery services in Canada.

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BENCHMARKING LEADS TO SUCCESS

Briarlane's management strategy founded in data

BY ■ LINDSAY MCKEEMAN AND BRUCE FULCHER, WATERSHED TECHNOLOGIES INC.

Property management requires a holistic approach that looks at more than just the bottom line to determine success. In 2016, a multi-year GHG reduction and utility benchmarking plan was implemented by Briarlane Rental Property Management Inc. to deliver impressive results. The effectiveness of Briarlane's management strategy is not based on guesswork or innovative products; it is all about real numbers. As Briarlane's President Brad Smith puts it: "If you don't track your utilities, you can't manage them!"

Briarlane Rental Property Management Inc. is the largest pure third-party property management company in Ontario managing more than 16,000 units and greater than 2 million square feet of commercial space in key regions throughout the province. After much consideration, they selected Watershed Technologies Inc., a Toronto-based science and engineering firm, to assist with implementing their water and energy management strategies.

Initial benchmarking of their portfolio identified 36 buildings as having an opportunity to significantly reduce water consumption. These opportunities showed savings from 11% to over 50% with resulting savings adding up to greater than $1.1 million per annum with a corresponding reduction of more than 5,000 tonnes of GHG (and a 261% ROI)!

COVID-19 CHANGES & WATER BENCHMARKING ASSESSMENTS

Only by benchmarking the buildings within a portfolio — i.e. comparatively looking at each building's utility consumption over a given period — can a company truly assess how those buildings are performing. Costs increase routinely and hide what is actually happening with water consumption. Additionally, and particularly relevant today with social isolation, is the substantial increase we are seeing in water consumption. Since March, 2020, multi-residential water consumption has increased substantially (between 5% and 50%!) as more people are staying at home, cooking meals, and working from home offices.

The question posed by Briarlane was one that many owners and property managers are asking: are all of the observable water increases attributable to COVID-19 lifestyle changes, or are some of these increases due to leaks, deterioration of parts and faulty fixtures? It's impossible to tell just by looking at invoices. Therefore, detailed water use profiles are now more important than ever to see how your buildings are performing.

If you can't see how your buildings are performing, how do you know what to do and when?

For Briarlane, Watershed's "Energy Brain" is used to track real time water use and compare it with historical water consumption within their buildings. Even though access to real time water use is available 24/7, typically a monthly report on each building provides enough timely insight to make informed decisions on whether or not any changes need to be made at any particular building. It removes the guess work and provides hard numbers.

However, in these times the standard hard numbers can be misleading. A clear example of this can be seen when evaluating completed water retrofit projects: with savings of 21% in January 2020 and an 18% social isolation related increase in water consumption since March of 2020, the numbers would indicate that water savings are only 3%. But this would be inaccurate. The current actual savings are, of course, masked by the COVID-19 related increases. In-depth evaluations are required to determine savings performance.

In order to stay on top of consumption, Briarlane is continuing to rely on the accuracy of Watershed's Energy Brain System, which deciphers the difference between water usage and water leakage, identifies water use anomalies, graphs out each building's water consumption profile, and produces a monthly financial and performance report for evaluation and next steps. These tools are proving essential for effectively managing the uncertainty surrounding water use during a global pandemic.

BENCHMARKING FOR INCREASED COMFORT AND DECREASED COST

A significant amount of time and money is invested in managing both the comfort and cost of multi-residential buildings. Benchmarking for comfort is a little out of the ordinary, but it goes hand-in-hand with

> **"THESE TOOLS ARE PROVING ESSENTIAL FOR EFFECTIVELY MANAGING THE UNCERTAINTY SURROUNDING WATER USE DURING A GLOBAL PANDEMIC."**

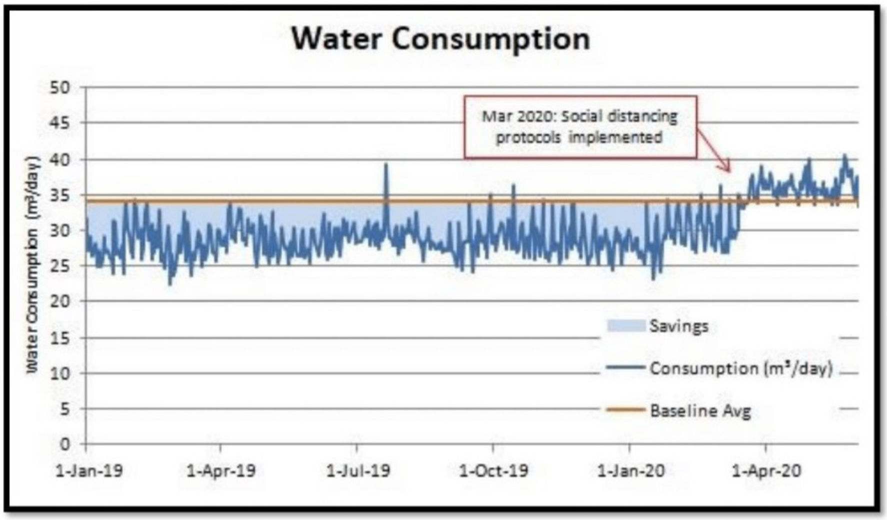


Figure 1: An example of a typical increase observed due to social distancing protocols

Figure 2: Typical IDO savings

assessing which heating systems are operating at increased gas guzzling levels. A proper evaluation of each of the building's heating profile will demonstrate comfort levels within the building.

Having done this, Briarlane has begun to incorporate an advanced building automation system, (ABAS), which uses off the shelf components integrating a customized software and control strategy that is building specific. This system uses a patented Interval Data Optimization (IDO) custom designed control strategy. It allows a standard atmospheric boiler system to operate without overheating the tenants, operating much akin to a high efficiency boiler system.

Through this course of action Briarlane has reduced heating costs by an average of 20%. Where IDO was combined with a new boiler plant, the average savings increased to 33%. The first 24 buildings identified and modified will have savings that total over 2 million dollars over 5 years, and will effectively eliminate over 13,000 tonnes GHG emissions!

Benchmarking analysis is more than determining how much money you're spending and where. It is the creation of a roadmap which outlines the greatest opportunities and how to get from point-A to point-B. Briarlane's openness to exploring these possibilities has been rewarded with huge utility savings, ultimately allowing them to invest further in improving each building and providing greater returns for each owner. According to Brad Smith, *"These projects are substantially increasing the building's profitability and real-estate value in less than one year's time"*.

By developing and engaging in a holistic strategy to manage their properties, Briarlane removed the guesswork out of utility management. They have shown that the potential for effective, fiscal and environmentally responsible business is not only possible but immediately attainable.

NAVIGATING THE NEW LTB LANDSCAPE

For landlords, it's complicated...

BY ■ JOE HOFFER, PARTNER, COHEN HIGHLEY LLP

For any landlord looking for remedies or responding to tenant applications at the LTB, the administrative impact of the current pandemic on application processing is unprecedented. The LTB has made numerous processing changes in response to COVID-19 in an effort to keep staff, landlords and tenants safe, while quickly resolving an enormous backlog of applications which resulted from the Province's shut down last March. Many LTB procedural changes took effect December 1, 2020 and landlords who are not prepared to update and inform themselves about the changes will put their applications and finances at serious risk. Non-compliance with the new procedures can result in dismissal of landlord applications or liability of landlords on tenant applications. What follows is a summary of major changes implemented at the LTB to provide some direction for small landlords to navigate those changes so that your proceeding won't be derailed due to an oversight or a technicality.

SERVICE OF DOCUMENTS, INCLUDING NOTICES OF TERMINATION (N4'S, N5'S AND OTHERS) BY E-MAIL:

A positive change is that Rule 3 of the LTB Rules has been amended so that service of LTB and RTA documents by email, such as Notices of Termination, is no longer prohibited. The risk for landlords is that service by email is only valid where the tenant has provided written consent to such service. If a tenant "signs" and dates an "informed" consent communication, whether it be electronically or on paper, the consent should satisfy the LTB Rule. The content of that consent is key: in addition to consenting to service of all documents, including all LTB forms, by email, the tenant should be informed that s/he has the right to revoke consent "at any time by giving notice in writing" to the party who served it. Service by email is deemed effective on the date the email is sent (not when it is opened by the recipient). All new tenancies should have tenants' consent to email service embedded in the rental application and lease. For current tenancies, tenants should be invited to provide email addresses and consent to service of documents by email.

FILING OF APPLICATIONS BY EMAIL:

Rule 4 provides e-filing instructions and under the new rules both landlord and tenant applications may be e-filed. Where the LTB permits an application to be e-filed, any related Notice of Termination and Certificate of Service must be uploaded at the time of filing using the LTB's e-filing portal: **https://tribunalsontario.ca/ltb/e-file**/. If the Notice of Termination and Certificate of Service cannot be uploaded at the same time as the application is e-filed, they must be emailed to the Regional Office responsible for the application within 5 calendar days of the e-filing. Failure to upload or to email these documents properly and in time may result in administrative dismissal of the application. Service of a document that is e-filed is effective on the date it is "received" by the LTB (not necessarily on the date it is sent), so special attention should be paid to compliance with the time limitations prescribed in Rule 4. Small landlords who are not fully informed about electronic e-filing should avoid the process altogether and follow Rule 4 processes for manual filing at LTB offices.

THE RISE OF THE "CASE MANAGEMENT HEARING" (RULE 9) AND PROCESSING BY PRACTICE DIRECTION:

Practice Directions and Case Management Hearings ("CMH") are procedural tools imposed by tribunals to help parties and the LTB to quickly process applications. The purpose of the CMH is to focus the parties' applications on facts relevant to the legal tests in an application and, if possible, to achieve a settlement and disposition of the proceeding without the necessity of a hearing. If a settlement is not achieved, the CMH hearings officer has authority to make orders specifying issues to be addressed at a hearing; directing the scheduling and manner of hearing; and, making orders for issues which are not in dispute. Any settlement discussions between the parties, like mediations, are confidential and may not be disclosed in later proceedings. The CMH has been given priority by the LTB in its efforts to resolve the backlog of cases before it and can issue final orders disposing of the application.

To facilitate the CMH process the LTB has issued a "Practice Direction" which, if not complied with, can result in a dismissal of a landlord or tenant's application. If an applicant party fails to attend the CMH, the application is likely to be dismissed. What has increased the risk for landlords is the COVID-related application backlog which has resulted in the LTB scheduling a flood of CMHs for the same landlord, often at the same time but in different jurisdictions and on very short notice. Where a landlord is unable to juggle the multiple requirements of a Practice Direction, there is a high likelihood that some of the notices of CMH will "fall through the cracks" resulting in administrative dismissal of the application and substantial financial loss to the landlord. If the landlord is a respondent who fails to attend a CMH, the Hearings Officer has authority to "deem" that the landlord has accepted all allegations of fact against it and to issue a final order against the landlord.

> **"FOR SMALL LANDLORDS THE TECHNICAL AND PROCEDURAL REQUIREMENTS FOR COMPLIANCE WITH WHAT USED TO BE A SIMPLE HEARING ATTENDANCE CAN BE OVERWHELMING, YET IF NOT COMPLIED WITH, THE APPLICATION MAY BE DISMISSED."**

The Practice Direction and CMH also provide deadlines for filing and disclosure of evidence. The attending parties are required to provide the Hearings Officer with dates for attending a final hearing of the application if the application is not resolved at the CMH stage. Most CMHs will be conducted by video hearing as the current pandemic drags on. Small landlords, in particular, are vulnerable to having applications dismissed or orders made against them unless they can carefully follow the instructions and rules described above.

PRACTICE DIRECTIONS FOR FINAL HEARINGS: EVIDENCE, ATTENDANCE

The LTB has issued a new Practice Direction, in combination with Rule 19 for formalize the timing and process for submission of evidence, particularly for use in video hearings. Failure to comply with evidentiary requirements can result in the evidence being excluded and the consequence of that can mean adverse findings against the landlord. The LTB also has rules regarding the size, format and uploading of evidence as electronic files. For small landlords the technical and procedural requirements for compliance with what used to be a simple hearing attendance can be overwhelming, yet if not complied with, the application may be dismissed. Unless a landlord is prepared to learn and implement the new rules, they should consider using experienced legal professionals to help navigate the process to a proper outcome.

SECTION 83 RTA CONSIDERATIONS AND BILL 184

The RTA was amended in July, 2020 (Bill 184) by adding some grounds on which an LTB Member is prohibited from issuing an eviction order and grounds for expanding the basis on which an eviction order may be granted or refused.

First, the LTB must refuse to grant an application for eviction on a "landlord or purchaser's own use" application or on an application for possession for substantial renovation if the landlord has not paid any required rent compensation to the tenant. Such compensation is payable in almost all circumstances where the landlord seeks possession based on the foregoing grounds, regardless of the size of the building portfolio.

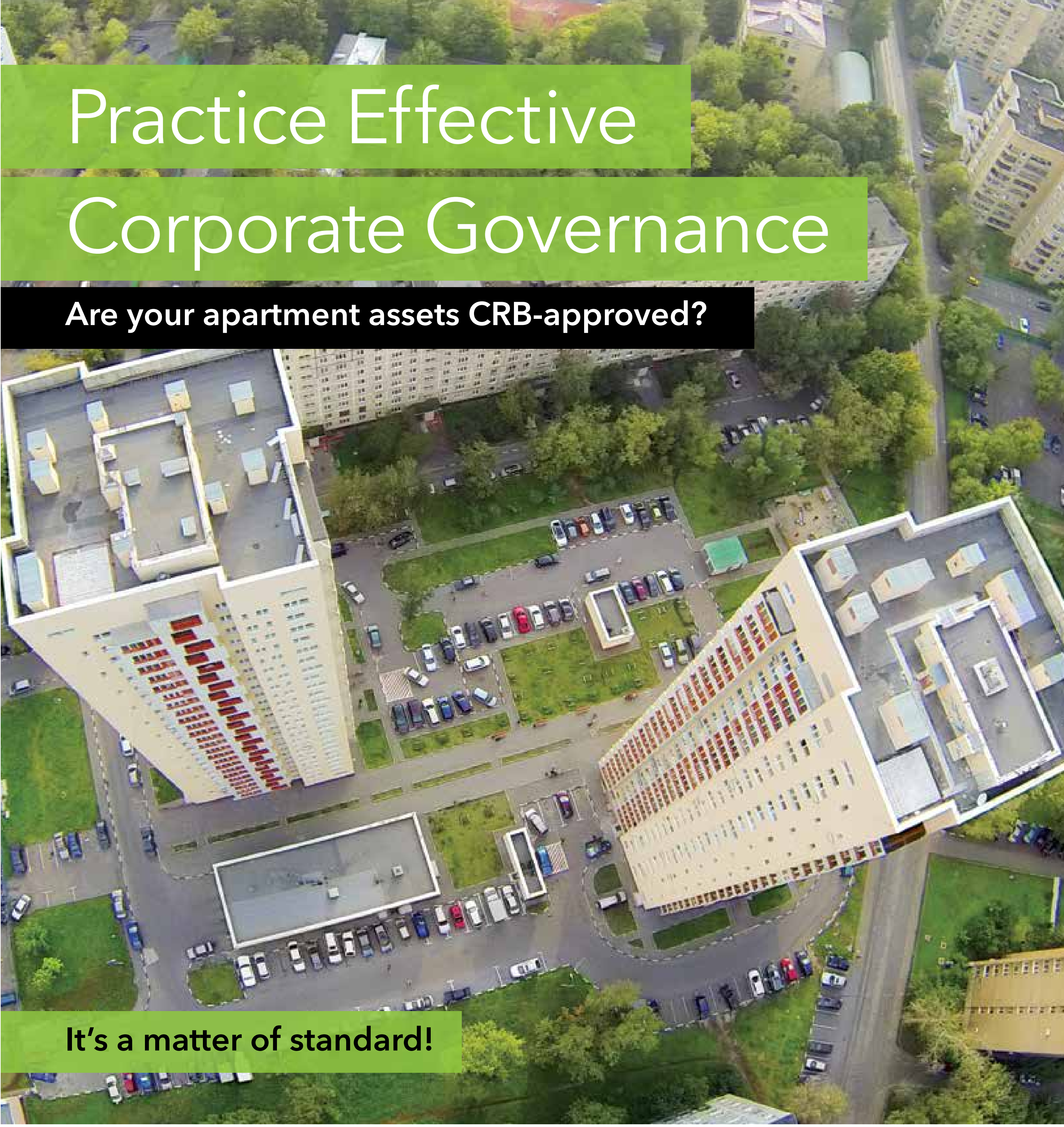
Secondly, where rent arrears owed by the tenant accumulated starting March 17, 2020 (the start of the COVID shutdown in Ontario) the LTB must consider whether the landlord attempted to negotiate some kind of payment agreement with the tenant prior to the date of hearing. If the landlord did attempt to negotiate, the LTB may exercise discretion in favour of the landlord but if the landlord has no evidence to show efforts to negotiate were made, it is more likely than not that eviction will be refused or substantially delayed. In the context of arrears negotiations, the LTB has produced a "Payment Plan" form which should be used by landlords as a starting point for negotiations and as a template for the payment plan. If a landlord can achieve a consent, the form can be submitted to the LTB and the application can be disposed of without a hearing or an order may issue based on the consent of the parties.

SUMMARY:

The best link to access all of the LTB Rules and Practice directions is here: **https://tribunalsontario.ca/ltb/rules-practice-directions-guidelines/**

While well-intentioned, the new processes and procedures created by the LTB require landlords to be laser focused on compliance with notices, rules, practice directions, strict timelines and evidentiary filings. The changes referred to above are just some of the most important ones flowing from consequences of the pandemic. The complexity of the process, if not followed, invites the dismissal of applications by landlords that have been sitting in the LTB queue for months, with arrears now easily reaching in the tens of thousands of dollars. Landlords need to inform themselves of the risks and the measures required to reduce those risks and where they lack the time or patience to do that, they must either ensure they have proper legal representation or be prepared to suffer the financial consequences of non-compliance.

Joe Hoffer is a Partner with **Cohen Highley LLP***, a law firm representing "landlords only". Joe and his team provide legal services with respect to all aspects of multi-res and commercial leasing and operations.*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Are your apartment assets CRB-approved?
It's a matter of standard!

ANSWERING THE CALL FOR GREATER ESG STANDARDS

CRBP members can achieve higher GRESB's scores

BY TED WHITEHEAD, DIRECTOR OF CERTIFICATION, FRPO CRBP

CERTIFIED Rental Building

RENT WITH CONFIDENCE

2020 will always be remembered as the year of COVID-19—the impacts of which will be felt for many years to come. Back in March, the multi-res industry was deemed an essential business, and for the most part, it responded admirably to the challenges of maintaining a safe environment for residents and employees. Those early experiences allowed the industry to pivot relatively smoothly to a post-crisis operating mode, often referred to *"the new normal"*. Currently there is some good news on the horizon, as several vaccines have been approved for use in the coming weeks.

ESG ADOPTION

The dominant focus on COVID-19 has made it is easy to overlook another major change that is taking place across the industry: the adoption of ESG standards (Environment, Social and Governance). Driving this transformation is the global investment community, which is increasingly looking at ESB when evaluating investments.

In a recent Toronto Star article, the headline read: *"In an unprecedented move, Canadian pension funds unite to call for greater ESG standards."* It goes on to state that investment managers are increasingly examining real estate companies on their performance on the environment and other sustainability issues along with financial results.

A key assessment tool being used is something called a GRESB's score, which stands for Global Real Estate Sustainability Benchmark. GRESB helps real estate investors assess the sustainability performance of real estate portfolios, providing standardized and validated data to capital markets.

The GRESB's assessment evaluates performance against three ESG components: Management, Performance, and Development. From a real estate coverage perspective, according to GRESB, 1,229 (2019: 1,005) property companies, REITs, private equity funds and real estate developers participated in the 2020 Real Estate Assessment, generating a benchmark that covers US $4.8 trillion AuM (2019: 4.1 trillion). This data is used by institutional and financial investors to make decisions that are leading to a more sustainable real asset industry.

FRPO'S CRBP - RECOGNIZED GRESB'S INDUSTRY ACCREDITATION PROGRAM

FRPO's Certified Rental Building Program (CRBP) is part of GRESB's list of recognized and approved green building certification programs. Certification in the CRBP can and is being used to impact overall GRESB scores and performance. Through the programs' Standards of Practice and its third-party audit verification process, ESG and sustainability efforts are inherently integrated into strategy and operations. CRBP offers a six-pronged focus on Human Resources, Resident Operations, Building Operations, Financial/Risk Management, and Environmental Management, as well as State of Condition Standards. Its certification approach ensures the development of member initiatives that can potentially set them apart from others within the industry. More importantly, it provides a framework to infuse the organization with a sense of purpose for sustainability, good governance and resiliency.

As many readers (and members) know, FRPO's CRBP is North America's first and only quality assurance assessment and certification program for the multi-res rental housing industry. It is uniquely positioned to provide its members, and the industry, with a low-cost GRESB-approved certification program. It has a strong alignment with ESG principles and could be a useful catalyst for the industry to highlight various members' undertakings to the broader public, government stakeholders, and investors. Being member-driven, it can be continually improved and customized to meet with the changing needs of GRESB and/or other benchmarking programs. At present, CRBP operates in two provinces — Ontario & B.C.—however, it could easily be adopted by other provincial jurisdictions.

For more information on FRPO's CRBP and how it could assist member with their ESG efforts and GRESB, please contact Ted Whitehead at twhitehead@frpo.org

FEATURE

NEIGHBOURS HELPING NEIGHBOURS

Medallion Corporation provides meals for 1,600 families

The impacts of COVID-19 have been far-reaching around the globe. With numbers of new cases rising daily, developers and landlords are looking at impactful ways to connect with their communities and support residents as the pandemic goes through its second wave and continues to challenge us all.

Urban centres like Toronto have felt some of the most profound impacts. Lockdowns, social distancing, and business closures have become our new "normal" with many different areas being affected such as schools, childcare facilities, workplaces, and small businesses.

The downtown east, home to many seniors, newcomers, and vulnerable low-income groups struggling with poverty, has been hit hard by COVID-19. Coming together to support the diverse groups most affected by the pandemic has never been more critical.

With food banks seeing demand rise to historic levels, Medallion Corporation, with projects across the GTA and in Toronto's downtown east, decided to take action and get involved to support those in need with a major food donation. The decision to support the downtown east was a no brainer once the organization's annual tenant barbecue was cancelled due to COVID-19 restrictions.

"Each year, we look forward to our tenant barbecue where we enjoy a great meal together and get to know our neighbours a little bit better," said George Espinola, Director of Operations at Medallion Corporation. "We were a little disappointed at first that we had to cancel in 2020, until we realized we could look at the situation through a new lens. This was actually an opportunity to support those impacted by the ramifications of COVID-19. We got to know our neighbours differently this year."

To complete the major food donation, leadership from Medallion's Toronto team partnered with Ward-13 City Councillor Kristyn Wong-Tam to identify local neighbourhood agencies offering food services for vulnerable residents located in the downtown east. Together, they selected five food banks within the neighbourhood all who spoke to the increase of clients they have seen since the onset of the COVID-19 pandemic.

"HEALTHY COMMUNITIES ARE PLACES WHERE EVERYONE HAS FOOD TO EAT, AND WHERE EVERYONE WHO HAS THE MEANS LENDS A HAND."

Medallion staff and volunteers hand-deliver an entire truck full of non-perishable items to food service agencies in downtown Toronto's east end.

"What we're experiencing is almost a 200% increase in terms of demand for food services and in particular food services for the downtown east," said Councillor Kristyn Wong-Tam. "The City of Toronto, including our corporate partners, need to step up where we can to ease the pain and challenges that families are experiencing today."

Doing just that, on October 22 Councillor Wong-Tam and the Medallion team, joined forces to hand-deliver an entire truck full of non-perishable foods. Thousands of boxes were delivered to agencies across the neighbourhood, including Yonge St. Mission, Neighbourhood Information Post, a pop-up food bank at Allan Gardens, All Saints Church and St. James Town Community Corner.

The donations were warmly received, with staff and volunteers from the food service agencies expressing their immense gratitude, as well as speaking to the incredible deed they witnessed first-hand within their community. For Medallion, it was a morning well spent and stark reminder of the importance of stepping up to the plate for those in need.

"Healthy communities are places where everyone has food to eat, and where everyone who has the means lends a hand. We learned a lot about the vital services provided by neighbourhood agencies in the downtown east that day, and we will certainly continue to build those relationships, keep in touch, and stay involved," said Espinola.

Medallion communities in east downtown include; The Towns at Sherbourne Place, 455, 551, 555 and 556 Sherbourne Street, 99 Howard Place, 670 Parliament Street, 135 Rose Avenue and 1&7 Glen.

Let's Build Ontario

The Federation of Rental-housing Providers of Ontario launched this campaign to promote innovative & equitable solutions to Ontario's housing crisis while maintaining the economic diversity & historical significance of our neighbourhoods.

We know there's a housing issue in our province, and together we can be part of the solution.

Join our campaign today at letsbuildontario.ca

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A CLOSER LOOK AT INFILL DEVELOPMENT

Tackling the GTA's rental housing shortage

BY ERIN RUDDY, EDITOR, MEDIAEDGE

With affordable rental housing continuing to be a pressing need in the GTA, some housing experts believe a solution has been sitting in plain sight all along: infill development. Simply put, it means adding new units to existing rental sites where there is room and opportunity for growth.

Currently, there are about 950 rental sites with the potential to add 176,000 new units throughout Toronto and the wider region.

"A lot of the sites are concentrated outside of the downtown core in relatively affordable markets," says Tony Irwin, president of FRPO. "The other thing that's important is that over 35 per cent of the potential units are within 800 metres of a current or future transit station."

According to a recent Urbanation report, Toronto and the Greater Hamilton Area will be facing shortages of up to 200,000 rental units within a decade unless solutions are implemented in the near-term to change this long-term reality. Even with COVID-19 tipping the market temporarily in favour of tenants, data indicates we'll see "a return to base projections" by 2022. Could infill development be the answer?

The pros certainly seem to outweigh the cons.

"If we could unlock development on these transit-oriented, rental infill sites, overnight we'd have an incredible impact on our city's housing affordability crisis," says Toronto City Councillor, Brad Bradford. "To be clear, we know that supply alone does not fix affordability. We also need the right kinds of supply in the right places — like 'missing middle' housing, which is more livable and more practical for families."

According to Bradford, Toronto has been making some positive strides in this arena. The City is poised to implement inclusionary zoning policies that would require a percentage of units built around transit hubs to be affordable; additionally the Open Door program already incentivizes and fast-tracks affordable rental development. It is also working towards modernizing and improving the development process overall.

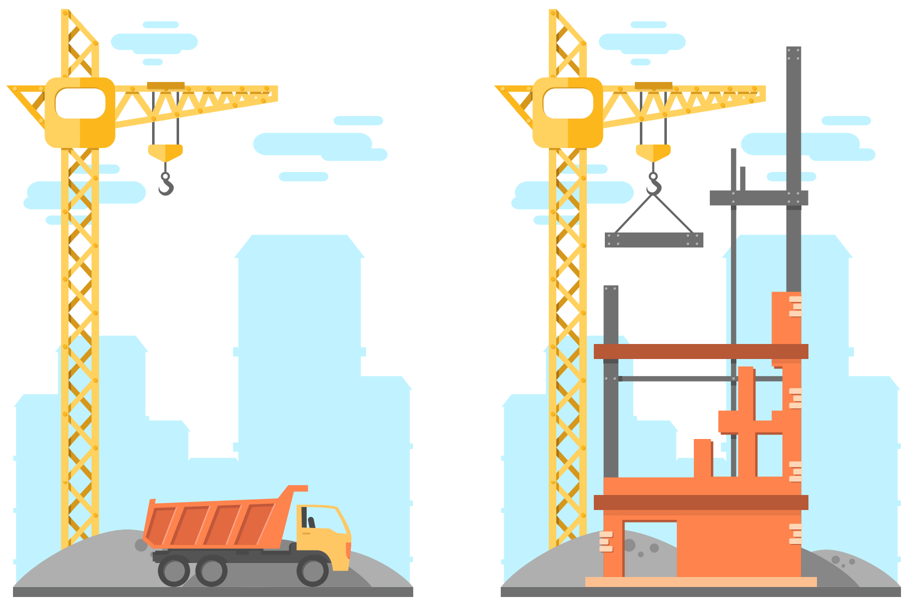
Diana Petramala, Senior economist at Ryerson University's Centre for Urban Policy and Land Development, is also in favour of infill development, although her projections are a little less dire in terms of future shortages.

"There is a lot less building in Ontario to meet Millennial demand than when Boomers were entering the labour and housing market," she says. "I do agree that there's a lot of potential for infill construction in the Toronto CMA, even the greater Golden Horseshoe, and it goes beyond the downtown areas that are already built. There's a lot of capacity to build along transit lines. I think that it's enough potential, for my own estimates, to absorb all the population growth that is expected out to 2051."

That said, Petramala cautions against building too much too fast — especially high-density and condos like we saw in the late-1980s, that led to the 1990 housing market crash. Instead, she advises mid-rise developments and ground-related housing, including semis, townhouses and stacked towns, calling this approach "safer and healthier" for markets and communities alike.

"You get all kinds of financial risks associated with building too many condos and not enough ground-related housing," she warns. "On the condo side, how sustainable are those investments? And then on the ground-related side, are people taking on too much debt to buy these units?"

"THERE'S A LOT OF CAPACITY TO BUILD ALONG TRANSIT LINES. I THINK THAT IT'S ENOUGH POTENTIAL, FOR MY OWN ESTIMATES, TO ABSORB ALL THE POPULATION GROWTH THAT IS EXPECTED OUT TO 2051."



Tall and affordable vs. short, luxury buildings

Ground-related housing, including missing middle, mid-rise, and medium density, are the "gold standard" of developments, but these aren't easy, as Toronto-based real estate developer Brandon Donnelly notes in a recent blog post: "Along the main streets and outside of the downtowns of many North American cities — which is where mid-rise buildings typically live — the land parcels are often smaller and the pieces of land needed to put together a viable project might be owned by half a dozen or so different people. Getting them all on-side to sell can be a feat in itself."

Meanwhile, builders want taller buildings that make financial sense, while communities often want the heights to come down. To recoup costs for a mid-rise project, builders charge luxury prices, thus the expense of a mid-rise build is passed down to the consumer.

Ontario's rental housing providers are constricted by these realities. According to Irwin, FRPO members want to build a variety of units, not just luxury ones. A project may be approved by the city, but only if 12 storeys, for example, are removed from the building's height. "The economics simply don't support that," he says. "I recognize that you have to be responsive to different points of view [of the community], but there has to be a way to make projects realistic and approve projects that are economically feasible."

Purpose-built rentals offer more stability than condos bought by investors and rented out: condo landlords can sell the unit or decide to use it themselves, sending the renter bouncing into the market again.

"Over the last two or three decades, very little purpose-built rental housing has been built in the Toronto area," notes Irwin. "There's nothing wrong with condominiums, but we need a mixture of different housing types. And we need an environment that definitely encourages and supports purpose-built rentals."

Councillor Bradford acknowledges these "land economics" and financial challenges, noting that the federal government has started offering low-interest capital for rentals via its National Housing Strategy. "There are HST reforms that move the dial on rental viability," he says. "That's something that would need to come from the province."

But no matter how the pieces come together, everyone agrees: the region needs more supply. "Over half of Toronto's households are renters," Bradford says. "The rental market is a key component of housing affordability and without new supply, our housing system gets stuck."

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